

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ATMI PACKAGING, INC.

Plaintiff,

v.

**MILLIPORE CORPORATION,
and
THERMO FISHER SCIENTIFIC, INC.**

Defendants.

Civil Action No.: 1:10-cv-11247-RGS

**PLAINTIFF ATMI PACKAGING, INC.'S REPLY TO THERMO FISHER
SCIENTIFIC, INC.'S COUNTERCLAIMS**

Plaintiff, ATMI Packaging, Inc. ("ATMI"), hereby replies to the Counterclaims of defendant Thermo Fisher Scientific, Inc. ("Thermo Fisher") as follows:

82. Admitted.

83. ATMI admits that it is a Minnesota corporation with a principal place of business at 10851 South Louisiana Avenue, South Bloomington, Minnesota.

JURISDICTION AND VENUE

84. ATMI admits that Thermo Fisher's Counterclaims purport to state claims under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, Title 35 U.S.C. §§ 1 et seq.

85. Admitted.

86. Admitted.

87. Admitted.

COUNT I
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,695,186

88. ATMI repeats and realleges the responses to Paragraphs 82-87 as if fully set forth herein.

89. Admitted.

90. Denied.

91. Denied.

COUNT II
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,695,186

92. ATMI repeats and realleges the responses to Paragraphs 82-91 as if fully set forth herein.

93. Admitted.

94. Denied.

95. Denied.

COUNT III
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,481,572

96. ATMI repeats and realleges the responses to Paragraphs 82-95 as if fully set forth herein.

97. Admitted.

98. Denied.

99. Denied.

COUNT IV
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,481,572

100. ATMI repeats and realleges the responses to Paragraphs 82-99 as if fully set forth herein.

101. Admitted.

102. Denied.

103. Denied.

COUNT V
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,086,778

104. ATMI repeats and realleges the responses to Paragraphs 82-103 as if fully set forth herein.

105. Admitted.

106. Denied.

107. Denied.

COUNT VI
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,086,778

108. ATMI repeats and realleges the responses to Paragraphs 82-107 as if fully set forth herein.

109. Admitted.

110. Denied.

111. Denied.

COUNT VII
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,434,983

112. ATMI repeats and realleges the responses to Paragraphs 82-111 as if fully set forth herein.

113. Admitted.

114. Denied.

115. Denied.

COUNT VIII
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,434,983

116. ATMI repeats and realleges the responses to Paragraphs 82-115 as if fully set forth herein.

117. Admitted.

118. Denied.

119. Denied.

COUNT IX
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,469,884

120. ATMI repeats and realleges the responses to Paragraphs 82-119 as if fully set forth herein.

121. Admitted.

122. Denied.

123. Denied.

COUNT X
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,469,884

124. ATMI repeats and realleges the responses to Paragraphs 82-123 as if fully set forth herein.

125. Admitted.

126. Denied.

127. Denied.

COUNT XI
DECLARATORY JUDGMENT OF [ALLEGED]
NON-INFRINGEMENT OF U.S. PATENT NO. 7,384,027

128. ATMI repeats and realleges the responses to Paragraphs 82-127 as if fully set forth herein.

129. Admitted.

130. Denied.

131. Denied.

COUNT XII
DECLARATORY JUDGMENT OF [ALLEGED]
INVALIDITY OF U.S. PATENT NO. 7,384,027

132. ATMI repeats and realleges the responses to Paragraphs 82-131 as if fully set forth herein.

133. Admitted.

134. Denied.

135. Denied.

RELIEF REQUESTED

WHEREFORE, ATMI respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper:

- A. Enter judgment in favor of ATMI on all claims pleaded by ATMI;
- B. Enter judgment in favor of ATMI on all affirmative defenses and counterclaims pleaded by Thermo Fisher;
- C. Enter judgment that Thermo Fisher infringes U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983, U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027 in violation of 35 U.S.C. § 271 *et seq.*
- D. Temporarily, preliminarily and permanently enjoin Thermo Fisher, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983, U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.
- E. Award ATMI monetary damages for Thermo Fisher's infringement of U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983, U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.
- F. Award ATMI treble damages and its attorneys' fees for Thermo Fisher's willful infringement of U.S. Patent No. 7,086,778.
- G. Award ATMI increased damages pursuant to 35 U.S.C. § 284;
- H. Declare this case exceptional and award ATMI its attorneys' fees and expenses pursuant to 35 U.S.C. § 285;
- I. Award ATMI its interest and costs incurred in this action; and
- J. Award ATMI all other relief deemed just and proper by the Court.

DEMAND FOR JURY TRIAL

ATMI demands trial by jury for all issues so triable.

ATMI PACKAGING, INC.

Date: February 8, 2011

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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants.

/s/ Paul J. Cronin
Paul J. Cronin